PRETRIAL PROCEDURES OF JUDGE LOUIS L. STANTON

A. Joint Pretrial Orders in Civil Cases.

Subsequent to the completion of discovery, parties in civil actions will be required to file a pre-trial order which shall conform to the guidelines set forth in this memorandum. At trial, the parties may only offer proof with respect to the disputed facts contained in the pre-trial order. The agreed facts will automatically become part of the record.

The time limits for the filing of the pre-trial order will be established by the Court at a pre-trial conference.

Since Judge Stanton's procedure differs substantially from that of other judges of this Court, counsel should review it carefully before beginning to prepare their order. A sample pre-trial order has been annexed as a guide at the end of these rules.

Judge Stanton's procedure is as follows:

1) Promptly after the completion of discovery, plaintiff shall serve on defendant a set of proposed findings of ultimate fact, without evidentiary detail, which would be sufficient to sustain a judgment for plaintiff if these facts were ultimately found to be true. Twenty findings should be sufficient in most cases.

2) Following the receipt of plaintiff's proposed findings:

a. Defendant shall inform plaintiff which proposed findings are contested and which are not contested. Disagreements should be on substance only, not on form or wording.

b. Defendant shall serve on plaintiff proposed counter-findings of ultimate fact with respect to the contested findings. With each counter-finding, defendant shall list the evidentiary source which supports his or her contentions, such as the page number of a deposition, name of a witness, exhibit or photograph.

c. Defendant shall also serve proposed findings on affirmative defenses and other subject matter not covered by plaintiff. Defendant's concessions, counter-findings, and new proposed findings should be sufficient to sustain judgment in defendant's favor if found to be true.

3) Following receipt of defendant's counter-findings and new proposed findings:

a. Plaintiff shall inform defendant which of defendant's proposed findings are contested and which are not contested. With respect to those which plaintiff contests, defendant shall list the evidentiary sources which support his or her contentions.

b. Plaintiff must then support each of the initially proposed findings which defendant disputes with an evidentiary source, citing the source which supports each proposed finding immediately after it.

c. Plaintiff shall also add reply counter-findings to defendant's new contentions with appropriate evidentiary support.

4) At this point the parties should meet to collate the various disputed and undisputed proposed findings, submitting to the court ONE CONSOLIDATED pre-trial order signed by all the parties to the action. This pre-trial order will consist of (1) a section containing agreed findings of fact, (2) a section containing plaintiff's proposed findings of fact with evidentiary sources, (3) a section containing defendant's proposed findings of fact listed immediately after the proposed finding it supports with evidentiary sources, (4) a joint list of expert witnesses, identified by name, and the party calling said witness(es), (5) a list of premarked joint trial exhibits which the parties agree may be received in evidence, (6) a list of other premarked exhibits which the parties <u>do</u> <u>not</u> agree may be received in evidence, together with the basis for objection and citation to the applicable Federal Rule of Evidence, and (7) a section indicating whether the action is a jury or nonjury matter and estimating the trial time which each party will require.

<u>When expert witnesses will be used to support disputed findings, the party who will call the expert must submit to his adversary and file with the Court on or before the submission date of the pre-trial order, a sworn statement, executed by the expert witness, summarizing his or her education and professional background and his or her direct testimony</u>. References to any documents or sources on which the expert will rely must also be included. When the expert is a doctor, however, the medical report will be accepted in lieu of an affidavit. In nonjury cases this statement will be received as the direct testimony of the expert and only cross, redirect and recross examinations will be accepted at trial.

5) Finally, with the pre-trial order the parties shall each submit trial briefs on contested issue(s) of law, requests to charge, proposed voir dire, and copies of the expert's sworn statements, if applicable. Trial briefs should also identify and address any evidentiary issue(s) likely to arise at trial. Briefs should be concise, declaratory statements of the law without unnecessary detail or recitation of facts. Each statement of law in the briefs must be supported by citation to appropriate authority.

B. Procedure in Cases set for Trial before Judge Stanton (Both Civil and Criminal)

Counsel with either jury or bench cases set for trial are to comply with the following procedures:

1) **Trial Date**. All trial settings are firm. The court clerk will be happy to answer your questions as to how the schedule appears, but reliance upon such information will not justify a continuance. Counsel with out-of-town witnesses or other special scheduling problems may request appropriate consideration by presenting an application well before the trial date.

2) **Pre-trial Submissions**. In jury trials, counsel are required to submit at the time the joint pre-trial order is filed (1) a brief discussing the issues to be tried (2) proposed voir dire questions and a list of individuals, companies or other entities that may appear as witnesses or otherwise be referred to during the trial, (3) proposed jury charges. In bench trials, unless otherwise instructed, counsel are required to submit proposed findings of fact and conclusions of law with their trial briefs.

3) **Exhibits**. Counsel should stipulate to the foundation for all exhibits whose authenticity is not questioned. Trial time will not be wasted on unnecessary foundation testimony.

All exhibits should be marked prior to introduction. No trial time will be used for this purpose.

At the beginning of the trial, a complete extra set of documentary exhibits should be handed to the Judge for his use during the trial. Upon application, the court may excuse a party from this requirement where it would be burdensome.

4) **Sidebar Conferences**. Sidebar conferences will be kept to a minimum. This court agrees with Standard 5.9 of the Standards suggested by the American Bar Association Advisory Committee on the Judge's Function (1972):

The trial Judge should be alert to the distracting effect on the jury during the taking of evidence of frequent bench conferences between counsel and the judge out of the hearing of the jury, and should postpone the requested conference to the next recess except when an immediate conference appears necessary to avoid prejudice.

5) **Procedure during Trial:**

a. Please be on time for each court session. If you have matters in other courtrooms, arrange in advance to have them continued or have a colleague handle them for you.

b. Please stand whenever you address the court. This includes the making of objections.

c. Stand a respectful distance from the jury at all times.

d. In your opening statement to the jury, do not argue the case and do not discuss law. Confine yourself to a concise summary of the important facts. Do not describe in detail what particular witnesses will say. Unless the case is unusually complex, each party will be limited to 10 minutes.

e. Please stand when you question witnesses. (Counsel with physical disabilities will be excused from this requirement). Do not pace about the courtroom when questioning witnesses. This distracts the jury and wastes time.

f. If you intend to question a witness about a group of documents, avoid delay by having all the documents with you when you start the examination.

g. When you object, make your objection short and to the point. Do not argue the objection in the presence of the jury, and do not argue with the ruling of the court in the presence of the jury. Do not make motions (e.g., a motion for a mistrial) in the presence of the jury. Such matters may be raised at the first recess.

h. Do not face or otherwise appear to address yourself to jurors when questioning a witness.

i. The jury should hear the instructions on the law of the case from the court, an impartial source. In your final argument, you may tell the jury what you

believe the substance of the court's instruction on a particular subject will be, but do not read or quote any instruction.

LOUIS L. STANTON
UNITED STATES DISTRICT JUDGE